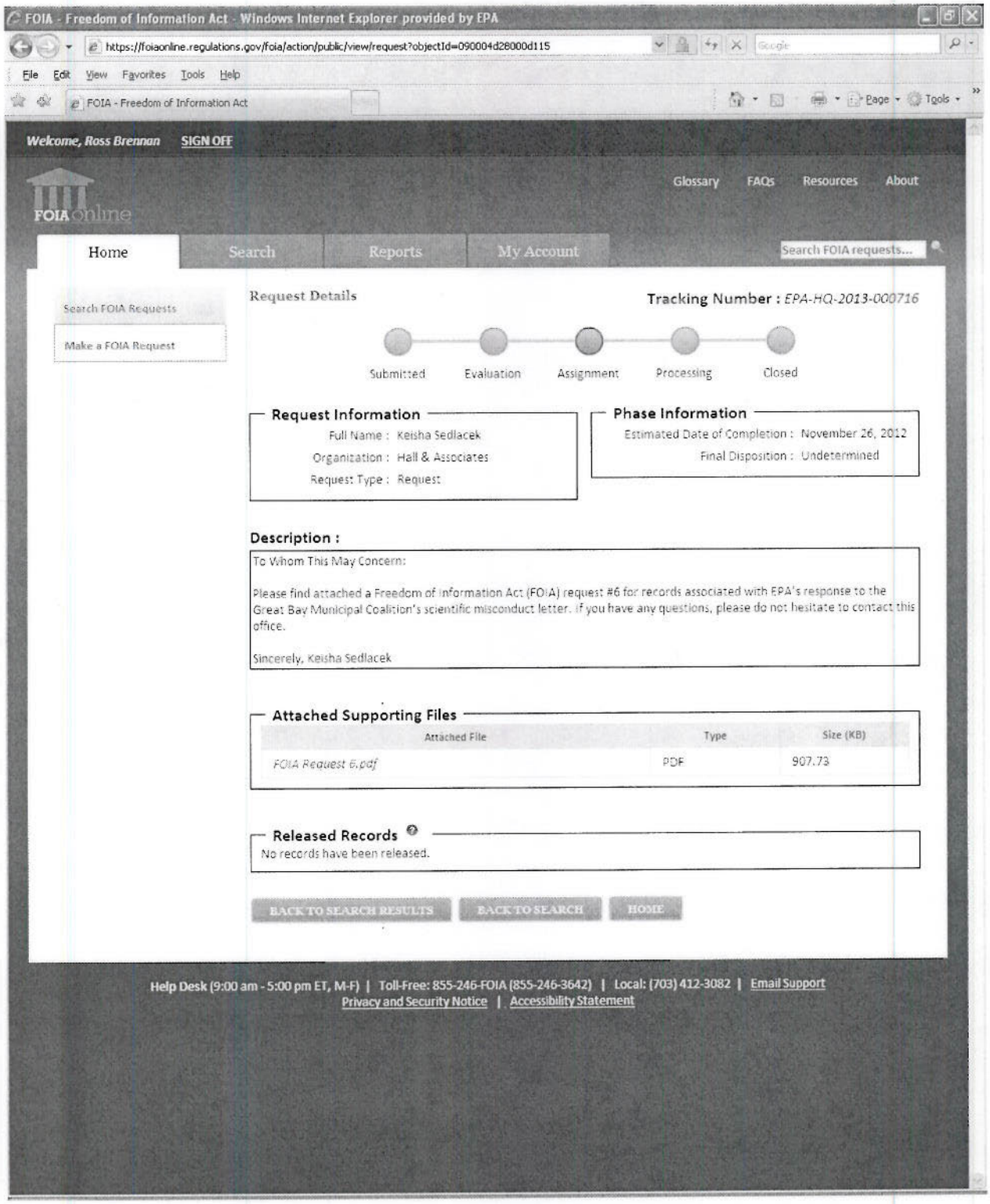
-716 (#6)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Request Details
Tracking Number : EPA-HQ-2013-000716
Submitted Evaluation Assignment Processing Closed
Request Information
Full Name : Keisha Sedlacek
Organization : Hall & Associates
Request Type : Request
Phase Information
Estimated Date of Completion : November 26, 2012
Final Disposition : Undetermined
Description :
To Whom This May Concern:
Please find attached a Freedom of Information Act (FOIA) request #6 for records associated with EPA's response to the Great Bay Municipal Coalition's scientific misconduct letter. If you have any questions, please do not hesitate to contact this office.
Sincerely, Keisha Sedlacek
Attached Supporting Files
Attached File
Type
Size (KB)
FOIA Request 6.pdf
PDF
907.73
Released Records
No records have been released.
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October 22, 2012

VIA E-MAIL

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW (2822T)
Washington, D.C. 20460
E-mail: hq.foia@epa.gov

RE: Freedom of Information Act Request for Records Associated with EPA's Response to the Great Bay Municipal Coalition's Scientific Misconduct Letter

To Whom This May Concern:

This is a request for public records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as implemented by the Environmental Protection Agency ("EPA") at 40 C.F.R. Part 2. This request is submitted by Hall & Associates on behalf of the Great Bay Municipal Coalition ("the Coalition"). For purposes of this request, the definition of "records" includes, but is not limited to, documents, letters, memoranda, notes, reports, e-mail messages, policy statements, data, technical evaluations or analysis, and studies.

Background:

On May 4, 2012, the Coalition submitted a letter to EPA Administrator Lisa Jackson and Inspector General Arthur A. Elkins, Jr. requesting (1) the review of Great Bay water quality criteria compliance and permitting be withdrawn from EPA Region I and transferred to an independent panel of experts who can assess the scientific basis of the Region's position and (2) the Region's actions leading to this request be investigated by the Office of Inspector General. The May 4, 2012, letter outlined, in detail, why EPA Region I's stance on imposing stringent TN limitations is based on the improper use of data and analyses to support a desired outcome and is not grounded in sound science. Additionally, the letter described how EPA has refused to allow an open peer review with public involvement in the process. Related to this request, the Coalition has met with EPA and submitted supplemental information to Ellen Gilinsky, Senior Policy Advisor, EPA's Office of Water on this issue.

On September 27, 2012, Nancy Stoner, EPA's Acting Assistant Administrator, responded to the Coalition stating EPA "has not seen any evidence that Region I engaged in scientific misconduct." The letter does not offer any explanation that indicates specific allegations raised by the Coalition were actually in error or false. This FOIA request seeks any such information regarding specific allegations.

Request:

As part of the Coalition's submissions to EPA, the following statement and supporting documentation were provided:

> *The numeric criteria document developed by DES, with EPA's assistance, did not include the prior information and findings of studies confirming that TN criteria for eelgrass and DO were not based on a demonstrated "cause and effect" relationship therefore, both the State of New Hampshire and EPA knew that these numeric criteria were based on confounded correlations that did not show TN caused the claimed changes in either transparency or DO. (See attached deposition excerpt of Mr. Trowbridge from July 11, 2012 verifying this point, as well as, an email from DES to EPA sent on November 19, 2008, and an internal EPA email sent on November 21, 2008.).*

Please provide us with all records that show this statement is incorrect.

Please contact the undersigned if the associated search and duplication costs are anticipated to exceed $250.00. Please duplicate the records that are responsible to this request and send them to the undersigned at the above address. If any requested records are withheld based upon any asserted privilege, please identify the basis for the non-disclosure. Moreover, to the extent EPA asserts that a document, or portions thereof, is privileged, the Agency is still responsible for producing the non-privileged portions of that document. If you have any questions regarding this request, please do not hesitate to contact this office so as to ensure that agency resources are conserved and only the necessary documents are reproduced.

Sincerely,

/s/ John C. Hall

JOHN C. HALL

Cc: Great Bay Municipal Coalition

Tony Lapa

From: Trowbridge, Philip
Sent: Wednesday, November 19, 2008 10:18 AM
To: 'Latimer.Jim@epamail.epa.gov'
Subject: RE: comments on NH estuaries N criteria document

Hi Jim,
Thanks for the comments. The meeting went well. There was some discussion but it was limited. It seemed like most people were taking some time to digest the proposal. The comment that seems hardest to refute is that nitrogen is correlated with light attenuation. Nitrogen was not proven to be the causative agent for light attenuation. Moreover, nitrogen is a component of all the factors causing attenuation (phytoplankton, CDOM, particulate organic matter) so a correlation would be expected. I will start working on the comments I received so far.

Thanks again.

Phil

-----Original Message-----
From: Latimer.Jim@epamail.epa.gov [mailto:Latimer.Jim@epamail.epa.gov]
Sent: Monday, November 17, 2008 5:56 PM
To: Trowbridge, Philip
Cc: Dettmann.Edward@epamail.epa.gov; colarusso.phil@epamail.epa.gov; Darryl_Keith/NAR/USEPA/US@EPA.epa.gov
Subject: comments on NH estuaries N criteria document

Dear Phil,

I hope that you had a productive meeting this afternoon. As I said this morning, I really needed today to carefully go over the draft before I commented. Without the benefit of today's participation, I have ventured to provide you with some of my comments (attached). I thought the document was well thought out, but needs some tweaking.

I'm interested in what the TAC thought? Were there any over-riding issues? Was it well received?

(See attached file: comments_latimer.doc)

Best regards,
Jim

James S. Latimer, Ph.D.
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latimer.jim@epa.gov

"All men by nature desire to know" – Aristotle
"The greatest kindness one can render to any man consists in leading him from error to truth." – Aquinas
"The right to search for truth implies also a duty; one must not conceal any part of what one has recognized to be true." – Einstein

My comments on the Great Bay nutrient criteria draft document

Matt Liebman to: Alfred Basile, Phil Colarusso, 11/21/2008 01:11 PM

From: Matt Liebman/R1/USEPA/US

To: Alfred Basile/R1/USEPA/US@EPA, Phil Colarusso/R1/USEPA/US@EPA, David Pincumbe/R1/USEPA/US@EPA, Jean

Al, and the rest of the crew, here are my final comments. I won't address issues that I think the rest of you will be addressing.

A good introductory sentence that praises there efforts would be good. I like the overall weight of evidence approach, and that they are applying a conceptual model that tests whether there is a dose response relationship in the data. And, most importantly, they find secondary, or independent, impacts from increasing concentrations of nutrients. These secondary impacts are independently related to use impairments. Thus, they are following a sound scientific approach to determine nutrient and chlorophyll thesholds above which impairments are likely to occur.

We discussed the issue about phosphorus limitation in the tributaries. We should stress that since the data indicate that phosphorus may be a limiting nutrient in the tributaries, it is important to move forward with protective criteria for phosphorus in rivers and streams.

They eliminated some data below detection limit. This may introduce some bias in the dataset, so it is worthwhile to find out how many samples were excluded.

I have no problem with using a 90th percentile approach for a swimming threshold, but a little more explanation of the 20 mg/l chlorophyll standard is called for, since that influences the criterion strongly. As we discussed, we are concerned that the threshold for freshwater is 15 ug/l, but for saltwater it is 20 ug/l. Can that be reconciled, or explained? This is important, because that would result in a nitrogen criterion closer to 0.55 mg/l TN.

To convert the threshold from yearly to summer, they applied the ratio of the summer to the year for one tributary (Squamscott), but I'm wondering if the same ratio holds for the other tributaries.

Re-reading the last paragraph on the bottom of page 41, I think he misstated his conclusion. He says that organic matter may be responsible for 47% of turbidity. That was the conclusion from the previous paragraph. In this paragraph, he is correlating turbidity with nitrogen (not particulate matter).

Anyway, the next paragraph opening sentence is the key sentence. He says that chlorophyll and half of turbidity are causally linked to nitrogen. This will be an objectionable sentence to some people, because the data are correlations, not causal. So, we should stress that even though the data are correlative, because of the strong relationships exhibited in the

data, and because many components of the conceptual model seem to be corroborated, it is very likely that nitrogen strongly contributes to turbidity in the water column, resulting in impacts to eelgrass. The question would be where does the nitrogen in the particulate matter come from? Does it come from terrigenous sources, salt marsh detritus, or decomposition from eelgrass, macroalgae, or phytoplankton sources. I wonder if that has been studied in Great Bay. I'm sure it has been studied in other estuaries like Great Bay.

Hope that helps.

Matthew Liebman
Environmental Biologist
US EPA New England
One Congress Street
Suite 1100 (COP)
Boston, MA 02114-2023

liebman.matt@epa.gov
tel: 617-918-1626
fax: 617-918-0626

(Recess.)

BY MR. HALL:

Q. Mr. Trowbridge, I've got a few more questions about the 2009 criteria document, and then ask you some weight-of-evidence questions, hopefully, and then we will go on from there. That should be pretty much closing.

2009 criteria document that you developed, that's a -- you said you used a weight-of-evidence analysis to come up with the criteria in that report; right?

A. Yes.

Q. Did you include in that report the evidence that indicated that transparency was not the cause of eelgrass loss in the system that you had developed in any of your earlier analyses?

A. What are you referring to for an earlier analysis?

Q. That transparency, or analysis of transparency had not changed over time; was that included anywhere in that report?

A. No.

Q. What about all the statements that Great Bay

is not a transparency-controlled system, from EPA and Dr. Short, and those are the ones you and I walked through in your first round of the deposition. Did you include the statements that Great Bay was not transparency-controlled?

A. I'm not sure; I don't believe so.

Q. Okay. What about the -- did you include the statements that the cause of eelgrass losses and changes in the system were unknown, statements that were contained in the various 303d listing documents?

A. Uhm, I have to look through. I'm not sure. I'm not seeing it here.

Q. Did you include any of Morrison's conclusions that the major factors controlling transparency in the system were, in fact, turbidity and color-dissolved organic matter, and not chlorophyll?

A. I believe we included equations from the Morrison study.

Q. Did you highlight the Morrison study concluded that the transparency level of Great Bay was acceptable, and that you needed to look at something else as the cause of eelgrass demise?

A. I'm not sure if we have that statement in

here.

Q. It's a pretty important statement, isn't it? It made your report.

Did you -- well, did you include any discussion about how the primary graphs that you were using to develop the transparency and nitrogen relationships were merely correlations and did not demonstrate causation?

A. I don't believe so.

Q. Actually, let me ask you a quick question on that. With regard to the low DO relationship to chlorophyll-a, and your transparency relationship to total nitrogen, both of those graphs are just correlations, right; they do not show causation?

A. That is correct.

Q. Is there anywhere in that document that you assessed the other factors, other confounding factors that impact the DO regime, such as sediment, oxygen demand, river flow, low DO coming in from swamp areas? Did you assess that anywhere in this analysis?

A. No.

Q. What about the factors that are controllable in tidal rivers; did you assess whether or not CDOM,

turbidity or any of the other factors that are significantly influencing the transparency level in the tidal rivers, is there any assessment of that anywhere in that document?

A. Uhm, can you clarify? Assessment of what?

Q. Of how those factors influence and control transparency in the tidal rivers?

A. So in the tidal rivers specifically.

Q. In the tidal rivers specifically.

A. No.

Q. Is there any assessment about how the change in rainfall patterns could have influenced the eelgrass losses or the transparency occurring in the system anywhere in that document?

A. Sorry. You said rainfall and what?

Q. Just how rainfall patterns influenced transparency in eelgrass populations in the system?

A. I don't believe so.

Q. Okay. Does that report include any of the case-specific analyses you did and evaluations that confirmed TN did not cause any excessive algal growth in the system or alter transparency in the system over time?

A. You say case-specific analyses. What are those?

Q. Your March 2008 presentation to EPA that said it's not a transparency issue. Does that -- was that analysis reflected in this assessment?

A. So you're talking about, like, the -- either the presentations or the interim reports?

Q. Correct.

A. Were they reflected in this report?

Q. Uhm-hmm.

A. I would say the interim analyses are not included in the report; no. They were not included in the final report. What was included was the final analyses.

Q. The final analysis which left out all of these prior analyses that indicated transparency wasn't controlled by chlorophyll-a or nitrogen. Hmm. Okay.

Let's talk weight of evidence for a moment. I don't have any further questions on that. Here's a -- darn it, what did I do with it? Ah, right here.

MR. HALL: Can we mark this as Exhibit 89, please?

(Trowbridge Exhibit 89 marked for